Adams & Westlake, Ltd., a wholly owned subsidiary of Midwest Management Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its Local Union No. 1367. Case 25-CA-15316(E)

31 July 1984

## ORDER DENYING PETITION FOR RULEMAKING

By Chairman Dotson and Members Zimmerman, Hunter, and Dennis

Pursuant to the general provisions of the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2355 (1980), and specifically Sections 102.124 and 102.146 of the National Labor Relations Board Rules and Regulations, Adams and Westlake, Ltd., a wholly owned subsidiary of Midwest Management Corporation, the Respondent, filed a petition on 22 June 1984 "to Amend Rule on Maximum Rates for Attorneys' Fees" and increase fees payable to its firm of attorneys from \$75 per hour to \$81.54 per hour.

The petition alleges, in pertinent part, that the \$75-per-hour permitted fee does not allow the Respondent's counsel to recover fees based on the present value of \$75 in 1981 dollars determined by changes in the Consumer Price Index (CPI). The Respondent contends that such a change would be reasonable considering its view that the prevailing rate for similar services has increased at a faster rate than the CPI.

The Equal Access to Justice Act was enacted on 21 October 1980 with an effective date of 1 Octo-

ber 1981, the same effective date as the pertinent Board Rules. The Act and the Board's Rules permit eligible parties that prevail in litigation before the Agency and over the Agency in Federal court, in certain circumstances, to recover litigation fees and expenses from the Agency. The Act, 5 U.S.C. § 504(b)(1)(A), provides that "attorney or agent fees shall not be awarded in excess of \$75 per hour, unless the Agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee." Section 102.145 of the Board's Rules limits recoverable fees to \$75 per hour, and Section 102.146 provides that any petitions to increase fees should state why higher fees are warranted by an increase in the cost of living or a special factor such as the limited availability of qualified attorneys or agents for the proceedings involved.

The Board has not tied fees awardable to the CPI, preferring to adhere to the statutory rate. [In any case, we understand informally that attorneys' fees are not a component of the CPI.] Therefore, we decline, at this time, to grant the petition for rulemaking to tie attorney fees awardable under the Act to the CPI.

Based on the Equal Access to Justice Act and the applicable Rules and Regulations of the Board, it is ordered that the petition requesting the Board to engage in rulemaking for the purpose of raising agent or attorney fees recoverable pursuant to the Equal Access to Justice Act and Section 102.145 of the Board's Rules is hereby denied.